

ANDREW JOE LEA, JR.,)
)
Petitioner,)
)
v.) 1:19CV683
)
STATE OF NORTH CAROLINA,)
)
Respondent.)

This matter is before this court for review of the Recommendation filed on July 19, 2019, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 2.) In the Recommendation, the Magistrate Judge recommends that this action be construed as a habeas petition under 28 U.S.C. § 2241 and dismissed sua sponte without prejudice to Petitioner filing a new petition which corrected certain defects in the original petition. The Recommendation was served on the parties to this action on July 19, 2019, (Doc. 3). In response to the Recommendation, Petitioner filed a letter motion requesting appointment of counsel, (Doc. 4), an application to proceed in forma pauperis, (Doc. 4-1), and a letter presenting new allegations concerning his safety in custody, (Doc. 5), which allegations Petitioner cannot pursue in this habeas action, but

instead must litigate in an action brought under 42 U.S.C. § 1983.

This court is required to “make a de novo determination of those portions of the [Magistrate Judge’s] report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). This court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions.” Id.

Although Petitioner’s application to proceed in forma pauperis remedies one of the defects in the original petition, his other filings fail to resolve the remaining defects noted in the Recommendation. This court has made a de novo determination which is in accord with the Magistrate Judge’s Recommendation. This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge’s Recommendation, (Doc. 2), is **ADOPTED**. **IT IS FURTHER ORDERED** that Petitioner’s submission, (Doc. 1), is construed as a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, that this action is hereby **DISMISSED WITHOUT PREJUDICE**, and that Petitioner’s letter motion requesting appointment of counsel, (Doc. 4), is **DENIED AS MOOT**. The Clerk is instructed to send Petitioner § 1983 forms and instructions.

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 5th day of September, 2019.

William L. Ostun, Jr.
United States District Judge